DEPARTMENT OF THE NAVY
BUREAU OF MEDICINE AND SURGERY
2300 E STREET NW
WASHINGTON DC 20372-5300

IN REPLY REFER TO
BUMEDINST 4200.2A
BUMED-M4
20 Feb 2004

BUMED INSTRUCTION 4200.2A

From: Chief, Bureau of Medicine and Surgery

Subj: HEALTH CARE CONTRACTING

Ref: (a) NAVSUPINST 4205.3B (http://www.nll.navsup.navy.mil/nll/filedetail.cfm?id=1648)
(b) NAVSUPINST 4330.7B (http://www.nll.navsup.navy.mil/nll/filedetail.cfm?id=38)

Encl: (1) Definitions
(2) Sample Contracting Officer Representative (COR) Nomination Letter
(3) Sample Alternate COR (ACOR) Nomination Letter
(4) Sample Technical Assistant (TA) Appointment Letter

1. Purpose. To replace the Bureau of Medicine and Surgery (BUMED) instructions regarding health care contracting and contracting officer's technical representatives (COTR) with one comprehensive document that addresses all facets of BUMED health care contracting. This document incorporates guidance regarding the use of franchised business activity (FBA) contracts that had been disseminated in BUMEDNOTE 4283 of 21 March 2001.

2. Cancellation. BUMEDINST 4200.2, BUMEDINST 4283.1, and BUMEDNOTE 4283 of 21 March 2001.

3. Definitions. See enclosure (1).

4. Applicability. This instruction applies to all medical, dental, and medically-related services for the BUMED claimancy.

5. Background

a. BUMED has a tremendous stake in health care contracting. During Fiscal Year 2003, BUMED contracting offices had over 500 health care contracts in place, providing nearly 2,500 health care worker full time equivalents. These contracts can provide many workers beyond current levels and, over their life, have a potential value well in excess of $1 billion. There is more at stake than money, however. Health care contracting also directly contributes to the health and well being of every member of the Navy family.

b. This instruction provides information, policy, and guidance for BUMED activities to manage their health care contracting resources more effectively. This instruction provides basic information of health care contract types and the selection of the right contract type for each requirement. Addressed are roles, responsibilities, and duties for contract planning, execution, and management. The BUMED COR has a vital role in contract management, and those duties are enumerated in detail.

c. Reference (a) provides Navy-wide guidance concerning duties, responsibilities, and limitations of the COR. Reference (b) requires the development of a contract administration plan (CAP) for service contracts and the appointment of a COR for technical guidance, monitoring, and surveillance.

6. Discussion

a. Prior to entering into any type of contracted health care service, it is important to consider the relationship of the medical treatment facility (MTF) to the overall plan for health care delivery in the region. Among the issues for consideration are provisions of the TRICARE contracts, Department of Veterans Affairs (DVA)/Department of Defense (DOD) sharing, and other health care delivery vehicles. All factors and all choices must be considered to ensure the best business decision in each case.

b. Direct Health Care Contracts. This section discusses the unique contract types used for the delivery of medical and dental services. Characteristics of the various contract types and indications for the use of each will be addressed. This section will also provide some information on the proper use of incentives in health care contracts.

(1) The following factors influence selection of contract type:

(a) Apportionment of Contract Risk. There are two types of contract risk – price risk and performance risk. Price risk is the extent to which the contractor and the Government share responsibility for differences between projected costs and actual costs. Performance risk is the degree to which the contractor and Government share responsibility for variability in the time, place, and manner of delivery. The contracting officer (KO) must select a contract type that apportions contract risk appropriately for the services to be acquired.

(b) Assessment of the Market. The Navy is one buyer among many for the commodity known as health care services. Some specific service commodities, pharmacists, or dental hygienists, for example, are scarce in certain areas. Some contract types work better than others in markets where the desired commodity is scarce.

(c) Cost Effectiveness. The price of health care services is a factor of the two elements previously discussed, risk and markets. The greater the risk assumed by the contractor, the higher the contract price. Likewise, the tighter the market for the desired services, the higher the contract price. In addition, there are structural elements of some contract types that affect overall cost effectiveness.

(d) Efficiency in Placement and Administration. Some contract types take longer to put in place than others. If the health care services are needed under contract quickly, the contract type options are limited. Advanced planning gives the requiring activity and the contracting office more options, increasing the cost and delivery effectiveness of the resulting contract. The requiring activity and the KO must also consider how the contract will be managed after award.

This subject is addressed in detail in the section of this instruction that covers COR functions. From the contract types perspective, certain contract types require more time and effort from both the requiring activity and the contracting office than others. The KO must consider the resources necessary to effectively manage the contract when selecting the contract type.

(e) Character of Services. Contract medical and dental services may be personal or non-personal in nature. For a detailed description of personal services contracts (PSCs) see Federal Acquisition Regulation (FAR) Part 37.4.

(1) In a PSC, the contract health care workers appear to be Government employees. Government personnel exercise direct supervision and control over the contract health care workers. An employer/employee relationship is created between the Government supervisor and the contract health care worker. PSC health care workers are usually integrated into the facility, working alongside Government personnel performing the same tasks. Personal services may be used for clinical positions only. Alleged acts of medical malpractice by personal services health care workers are covered under the Federal Tort Claims Act in the same manner as military or civil service health care workers.

(2) In a non-personal services (NPS) contract the health care workers are supervised by the contractor. No employer/employee relationship exists between the Government managers and the contract health care workers. NPS are normally segregated in the facility. In other words, the contractor is responsible for providing the entire service or function (for example, a complete emergency room or ambulatory care clinic). NPS may be used for clinical or administrative tasks. The contractor indemnifies the Government against legal action alleging malpractice by NPS health care workers.

(3) Some health care contract types may be used regardless of the character of services. Others may be used only for personal or NPS.

(2) Common Health Care Contract Types

(a) Definitive Agency Contract

(1) Definition. A definitive agency contract is a firm fixed price vehicle where the contractor delivers a fixed level of service at a fixed price per year throughout the term of the contract (normally 5 years). The contractor is required to furnish a qualified substitute if a health care worker leaves.

(2) Price Risk. In a definitive agency contract the contractor assumes the price risk from the need to predict labor costs throughout the entire 5-year performance period. The contract price cannot be increased if the contractor has to pay the health care worker more than projected, even if the health care worker salary is more than the amount the Government pays the contractor. Even though the contractor assumes this price risk, the Government ultimately suffers the loss of performance if the contractor abandons the contract at a financial loss.

(3) Performance Risk. Definitive agency contracts are relatively inflexible, so the Government bears the risk of variability of performance. The KO may negotiate very modest changes to performance and execute a modification that reflects the changed work at a new price. Changes of any substance normally constitutes "new work" and must be the subject of an entirely new procurement action.

(4) Assessment of the Market. Definitive agency contracts work best in robust to moderately tight labor markets. Because the contractor is at risk for cost, a tight labor market may result in an unreasonably inflated price that reflects contingencies or an unrealistically low price if the contractor has not adequately gauged the market.

(5) Cost Effectiveness. Definitive agency contracts are cost effective for stable requirements that include multiple positions.

(6) Efficiency in Placement and Administration. Definitive agency contracts may normally be awarded within 180 days of receipt of a complete procurement package; however, higher dollar value or more complex requirements may take longer. (See the section of this instruction that addresses the roles and responsibilities of the Naval Medical Logistics Command (NAVMEDLOGCOM) Healthcare Services Support Directorate for a description of a complete procurement package.) Ease of administration varies by dollar value and complexity of the contract. Most definitive agency contracts require moderate administration efforts by the requiring activity and the contracting office.

(7) Character of Services. Definitive agency contracts are appropriate for either personal or NPS requirements. For PSCs, the contractor is usually a professional staffing firm that recruits, retains, and compensates the health care workers. For NPSs, the contractor may be a health care management company or a firm that delivers the service in question (e.g., radiology or surgery practice).

(8) Conclusion. Definitive agency contracts are an appropriate contract vehicle for stable requirements that involve multiple positions. These contracts also work well in situations that involve "coverage" positions where every shift must be filled.

(b) Individual Set Aside (ISA) Contract

(1) Definition. An ISA is a firm fixed price contract made directly with the health care worker following streamlined procedures described in the Defense FAR Supplement at Part 237.104. Selection is based on the experience and qualifications of the health care worker in addition to price.

(2) Price Risk. Like a definitive agency contract, the ISA contractor proposes a fixed price per year for the term of the contract (usually 5 years), so the price risk rests with the contractor. If the ISA contractor fails to propose a price high enough to account for inflation in the out years, or if the market changes to the extent that the ISA contractor's price is below market value, the contractor will likely exercise his or her option to terminate the contract by giving 15 days notice.

(3) Performance Risk. The Government bears substantial risk for variability of performance in ISA contracts. If an ISA contractor leaves the contract before its scheduled expiration, the KO must begin a new acquisition. No substitutes are permitted on contracts with individuals. Likewise, if the Government's needs change with respect to the qualifications of the position or the quantity of services desired, a new acquisition will probably be called for.

(4) Assessment of the Market. ISAs only work in a robust local market for the services in question.

(5) Cost Effectiveness. ISAs are usually the most cost effective health care contract type because the agency's overhead costs and profit are avoided. It should be noted, however, that the ISA contract price contains more than just labor costs. The ISA contractor also includes the cost of benefits (health insurance, retirement plan, etc.) and self-employment taxes in his or her price.

(6) Efficiency in Placement and Administration. ISAs can usually be put in place in less than 140 days, sometimes much quicker. Once in place, however, ISAs require significant resources to maintain. Since each ISA health care worker has a unique contract, the number of administrative actions necessary to maintain the contracts is multiplied by the number of ISA health care workers on board. In addition, some variability in the contract invoice and payment process is inevitable throughout the life of the contract. While an agency is expected to have the financial resources to withstand this variability, some individual contractors do not.

(7) Character of Services. ISAs may only be used for PSCs.

(8) Conclusion. ISAs work best for health care providers and mid-level practitioners in robust local markets. These "high end" positions take full advantage of the ability to select based on individual qualifications, the cost avoidance associated with agency overhead and profit is greater for these positions, and these individuals are better able to absorb payment variability.

(c) Indefinite Delivery Type Contracts (IDTCs), including Multiple Award Task Order (MATO) Contracts

(1) Definition. IDTCs are a class of contracts where the Government's delivery requirements are not known at time of award. Typically, the contract contains a minimum level of service that the Government guarantees to order from the contractor and a maximum level. The Government may order, by way of task orders (TOs) issued against the basic IDTC contract, any level of service between the minimum and the maximum. In a MATO scenario, the Government awards contracts to three or more vendors who then compete for individual TOs. TOs are awarded on the basis of price and past performance. In some cases technical merit and timeliness are also considered.

(2) Price Risk. The contractor and the Government in TO contracts share price risk. TOs are issued on a firm fixed price basis, so the contractor has the price risk for each individual TO. However, the Government issues a TO for each performance period (up to a year), so the contractor is not forced to predict labor costs far into the future.

(3) Performance Risk. In TO contracting the contractor accepts the risk associated with variability of performance. The Government may change the level and type of service required with each TO as long as the need still remains within the scope of the original contract.

(4) Assessment of the Market. Although no contract vehicle will enable us to purchase services that are simply not available, TO contracts are the most effective in tight labor markets because of their inherent flexibility. Performance can be adjusted each performance period to reflect changes in the market, if necessary.

(5) Cost Effectiveness. Cost effectiveness of TO contracts varies by location, type, and duration of service. The contractor's assumption of performance risk increases costs in some cases; however, that upward cost pressure is balanced by the need to compete for individual TOs.

(6) Efficiency in Placement and Administration. It may take 9 months to award a complex indefinite delivery contract, but once in place individual TOs can be issued in approximately 60 days. Like services can be combined into larger TOs, easing administration. Generally, TOs are the most efficient contract vehicle to award and administer for both the requiring activity and the KO.

(7) Character of Services. Services performed under Indefinite Delivery Indefinite Quantity (IDIQ) contracts may be personal or non-personal.

(8) Conclusion. TO contracting provides a fast and flexible contract vehicle that operates well over a wide range of circumstances.

(d) Orders against VA and General Services Administration (GSA) schedules. The VA and GSA contemplate establishing personal services health care schedules that would operate in the same manner as current schedules for administrative and information technology supplies and services.

(3) Contract Incentives

(a) An incentive plan may be incorporated into a definitive agency contract, ISA, or IDIQ contract to positively influence contractor behavior. Contract incentives provide the "carrot" which, when used together with the "stick" of contract remedies for non-performance, provide the Navy with an effective contract management regimen.

(b) Contract incentives provide the contractor, or the contractor's health care workers, with something of value in return for performance above contract requirements. "Something of value" may be monetary or non-monetary (additional time off, for example). Performance above contract requirements may be expressed qualitatively or quantitatively.

(c) The performance objectives, criteria for performance evaluation, and method of incentives administration must be part of a formal incentive plan that is made part of the contract.

c. Franchise Fund Contracts

(1) The Government Management Reform Act of 1994 authorized a pilot program within six executive agencies for establishment of a Franchise Fund to provide such common administrative support services which can be provided more efficiently through such a fund than by other means. Services are to be provided by such funds on a competitive basis.

(2) The contracts established by the Franchise Fund activities to competitively provide services have been variously known as Franchise Business Activity (FBA), Cooperative Administrative Support Unit (CASU), GoTo.Gov, and Fedsource.

(3) The resulting Franchise Fund contracts are non-personal services contracts intended for administrative services, and which, if used for health care services, lack the clauses necessary to properly indemnify the Navy in the event of medical malpractice. The Franchise Fund activities lack the authority to award PSCs; however, Franchise Fund contracts are sometimes marketed by proponents as a means to supplement existing staff in a manner that may create an employer/ employee relationship according to FAR Part 37.104.

(4) The use of Franchise Fund contracts as a means for the provision of direct health care workers may result in an improper, and unenforceable, contract that places the MTF, the dental treatment facility (DTF), or other BUMED field activity and the health care worker at unacceptable risk.

(5) Franchise Fund contracts are an appropriate source of "common administrative support services," as stipulated in the authorizing legislation. BUMED field activities may use Franchise Fund contracts to acquire clerical, administrative, and information processing support, for example.

(6) Users of Franchise Fund contracts are cautioned to pay close attention to the fiscal details relating to such transactions, particularly when making purchases with annual appropriations. Such Funds do not represent a method by which the life of an appropriation can be extended. Navy customers can not create bank accounts with the Franchise Funds and transform deposits made to them from annual appropriations into funds that never expire for obligation purposes. Valid obligations must still be created within the original life of an annual appropriation by satisfying three conditions: (1) transferring funds currently available for obligation; (2) executing a binding interagency agreement; and (3) having a current bona fide need for the services to be provided under the Franchise Fund contract.

7. Policy

a. The BUMED Health Care Services Procurement and Contracting Offices

(1) The BUMED procurement offices with simplified acquisition procedures purchasing authority may issue purchase orders for personal or non-personal health care services to the limit of that authority for the purpose of securing immediate or interim services while the long-term requirement is processed. If authorized by the cognizant contracting office, BUMED ordering officers may issue orders against established IDIQ (see below) contracts for health care services.

(2) NAVMEDLOGCOM, Acquisition Management Directorate, is the BUMED contracting office for personal services health care services contracts above the simplified acquisition procedures threshold. Fleet Industrial Supply Center (FISC) Norfolk, Detachment Philadelphia, is the BUMED contracting office for NPSs health care services contracts above the simplified acquisition procedures threshold.

(3) NAVMEDLOGCOM, Healthcare Services Support Directorate, serves as BUMED's cognizant technical manager for all health care services contracting initiatives. The Directorate has approval authority for the technical specifications for all health care services contracts. All health care services statements of work (SOWs) are forwarded to the cognizant contracting office via the Healthcare Services Support Directorate.

b. Contracting Officer's Representatives (CORs)

(1) All non-personal health service contracts must be monitored by an appointed COR.

(2) A PSC with an individual employee whose performance is monitored by a technical liaison at a facility will not require an appointed COR, i.e., contract dentist monitored by a Navy dentist or contract radiologist monitored by a Navy radiologist, etc. For these contracts, the technical liaison will provide assistance to the administrative contracting officer (ACO). BUMED field activities with many individual contracts should consider nominating a COR to the KO to be named within the contract to manage the total contracting "program."

(3) PSCs that are more complex in nature, are of comparatively higher dollar value, and require services of multiple employees or varied types of employees acquired by contract with a firm or company will be monitored by an appointed COR.

(4) To ensure the most appropriate and qualified CORs are assigned to health service contracts, all individuals responsible for evaluating and nominating personnel for COR duties will base their decisions on the criteria contained in this instruction.

(5) The authority of the COR is restricted by reference (a) to providing technical direction, clarification, and administrative duties within the scope of the contract. No COR has the authority, either by individual action or by cumulative effect of actions, to change the scope, delivery schedule, cost or fee, labor mix, or other contract terms or conditions.

(6) The COR designation does not change or supersede the established line of authority or responsibility of any organization.

(7) The CORs appointed to BUMED health care contracts must be certified by attending the Naval Supply Systems Command (NAVSUP) approved COR training course presented by NAVMEDLOGCOM and designed specifically for health services contracts. This fundamental training is required for all who are scheduled to fill a COR billet for the first time.

(8) The CORs appointed to BUMED health care contracts must attend a NAVSUP approved/NAVMEDLOGCOM provided COR refresher training class not later than 3 years from the date of attending initial COR training or the date of the previous COR refresher training.

(9) The CORs are encouraged to attend classes on time and stress management, risk management and quality assurance, leadership, organizational and group dynamics, management of change, and conflict resolution.

(10) Technical liaisons designated in BUMED health care contracts are encouraged to attend the NAVSUP approved COR training course presented by the NAVMEDLOGCOM.

c. Franchise Fund Contracts. BUMED field activities shall not use Franchise Fund contracts for the provision of direct health care services.

d. Support of Small and Small Disadvantaged Businesses. The BUMED procurement and contracting offices will actively support small and small disadvantaged health care services businesses by establishing aggressive, but attainable utilization goals and effective outreach programs. The NAVMEDLOGCOM and FISC Norfolk, Detachment Philadelphia small business utilization specialists are effective resources for small and small disadvantaged business issues.

e. GSA and VA Schedules. Until the efficacy of GSA and VA schedules for health care services can be established, NAVMEDLOGCOM is the only authorized Navy ordering office for these schedules.

8. Duties and Responsibilities

a. BUMED. Each BUMED field activity is expected to manage contracts within funding previously provided. Contract costs above originally approved levels resulting from contract expansion, inflation, or re-competition are the responsibility of the field activity. BUMED will pursue opportunities to replace contracted personnel with military personnel where appropriate and possible. Funding for contracts replaced by military personnel will revert to BUMED for reallocation. Where field activity contract changes cause an increase in another budget, e.g., TRICARE/CHAMPUS, that increase must be covered with contract savings accrued from the contract change. The fiscal environment surrounding Navy Medicine demands increased emphasis on Business Cost Analysis (BCA). Activities must understand the business ramifications that local decisions have on health care initiatives in the direct care system and

under the Managed Care Support Contracts (MCSCs). Understanding and complying with the requirements of Office of Management and Budget (OMB) Circular A-76, Performance of Commercial Activities, and the implementing BUMED instruction, Strategic Sourcing Program, are equally important.

(1) Deputy Chief BUMED, Resource Management/Comptroller, BUMED-M8. In conjunction with BUMED-M3M and BUMED-M3D:

(a) Reviews requests for health care contract funding with the intent to provide aggregate solutions to beneficiary needs which are most advantageous in terms of cost or overall mission accomplishment.

(b) Submits formal budgets that identify contract priorities established by BUMED-M3M and BUMED-M3D.

(c) Issues funding documents for health care contracting to activities via the healthcare support offices, when applicable.

(d) Provides financial workload and demographic data gathering, evaluation, and analysis for all national contracting efforts.

(e) Evaluates expense and obligation performance of all contracts to ascertain current and out-year fund availability for reallocation, consistent with BUMED-M3M and BUMED-M3D contracting plans.

(f) Ensures that health care contracting is implemented in compliance with A-76 requirements.

(2) Deputy Chief BUMED, Medical Operations Support (BUMED-M3M)

(a) In conjunction with BUMED-M8, reviews BCAs submitted by field activities to ensure that: the proposed project will meet beneficiary needs while ensuring sustainable products and services; the projected return on investment has been accurately calculated; and the projected return on investment is positive, i.e., sufficient to offset the investment costs.

(b) Identifies staffing increases and decreases which impact scope of contract services at specific facilities and identifies associated funding recoupments or requirements to BUMED-M8 for potential budget adjustments.

(c) In coordination with BUMED-M8, approves requests for health care contracts that require additional funding and/or constitute new or expanded clinical services. Such requests must be submitted via the BCA process.

(3) Deputy Chief BUMED, Logistics (BUMED-M4)

(a) Provides overall direction and policy for health care contracting within guidelines and authority established by NAVSUP.

(b) Provides advice and assistance to BUMED procurement offices in the form of best practice information, compliance reviews, organizational assessments, training, logistics systems implementation, and help with special projects or problems.

(4) Deputy Chief BUMED, Dental Operations Support (BUMED-M3D)

(a) Provides overall direction for the planning, development, and operation of Navy DTFs worldwide.

(b) Establishes dental contract policy guidance.

(c) Monitors the progress and achievement of dental contracts within the overall dental health care delivery system.

(d) Serves as subject matter expert for all technical aspects of dental care and contracting efforts.

(e) Provides conceptual approval for all new requirements and re-competitions of existing requirements (not to include re-competitions for existing TOs or logical follow-on decisions for existing TOs).

(f) Provides representation on BUMED-M3D/NAVMEDLOGCOM joint dental policy and process working groups.

b. Commanding Officers

(1) Become familiar with health care contract types and the factors that affect their selection.

(2) Contact the NAVMEDLOGCOM, Healthcare Services Support Directorate, regarding the technical health care aspects of health care contracting and contract incentive plans.

(3) Forward health care contracting requirements or procure locally as outlined above, documenting that any and all requirements for consideration of A-76 cost comparison have been met.

(4) Nominate a COR from within the command for each health care contract meeting the criteria given below. Selection of the COR should be given the same care and consideration as that given to any key position within the organization. Nominations should be made during the acquisition planning process to enable the individual to participate in pre- and post-contract

award meetings which will ensure full understanding of the contract requirements and enable the COR to successfully monitor contractor performance. Nominations must be signed by the commanding officer of the requiring activity and submitted to the KO in the format set forth in enclosure (2).

(5) Ensure that all individuals nominated as COR or alternate COR (ACOR) have the necessary qualifications to satisfactorily perform the required duties and hold a position of responsibility commensurate with the complexity of the contract. All CORs shall have graduated from a NAVSUP approved/NAVMEDLOGCOM provided medical and dental COR training course prior to their appointment. Base COR selections on the following criteria:

(a) COR Attributes. Experience has proven that the characteristics most desirable for CORs are: leadership, integrity, credibility, communication and analytical skills, as well as technical and administrative competence.

(b) Grade, Position, and Experience. The COR should be of sufficient grade and hold a position in the organization commensurate with the complexity of the contract to effectively manage and advocate for the contract within the BUMED field activity.

(c) Type of Contract or Service. Assess whether the COR will be managing contractor employees (PSCs) or monitoring contractor performances. Determine whether the COR will need detailed clinical knowledge.

(d) Extent of Contract Administration. Assess whether the COR will need contract management expertise or general administrative expertise.

(e) Resources. Military or civilians may be assigned primary or collateral duties as a COR depending on the complexity of the contract and the number of contracts assigned.

(6) Nominate an ACOR in writing, from within the command for each health care contract where a COR has been appointed. The nomination for ACOR must also be signed by the commanding officer of the requiring activity and submitted to the KO in the format set forth in enclosure (3).

(7) Maintain close liaison with assigned COR to remain fully apprised of contractor performance and identified potential problems to ensure appropriate and timely action is taken.

(8) Assign a technical assistant (TA) for more complex contracts to assist the COR in executing routine contract administration, monitoring, and surveillance duties. The appointment of all TAs must be in writing in the format specified by enclosure (4) and must include the TA's responsibilities and limitations. A copy of this appointment letter shall be provided to the KO. Before appointment, the BUMED field activity shall assure that all TAs have the appropriate training and experience.

(9) Determine if COR duties are being performed in a satisfactory manner. If duties are not being performed in a satisfactory manner, immediately take corrective action including replacing the COR, if required and notify the KO.

(10) Include COR performance in periodic performance evaluation and fitness reports.

(11) Ensure that subject matter experts are available to the COR.

c. Contracting Officers (KOs)

(1) Select the appropriate contract type for health care contracting requirements, seeking input from the requiring activity and NAVMEDLOGCOM, Healthcare Services Support Directorate.

(2) Authorize ordering officers as outlined above. Provide oversight, guidance, and support to authorized ordering officers.

(3) Actively support BUMED, NAVSUP, and Navy policy with respect to utilization of small and small disadvantaged businesses in health care contracting.

(4) Officially appoint the COR and ACOR in writing and specifically designate the COR in the contract as the only authorized representative to act on the KO's behalf. Provide specific duties, responsibilities, restrictions, qualifications, and feedback procedures in the appointment letter. Only one COR can be assigned per contract unless a waiver is received from NAVSUP and authority provided to award multiple CORs to be appointed by TO under a MATO contract. ACOR may be assigned to more than one contract.

(5) Maintain periodic communication with the CORs.

(6) Periodically assess performance of CORs and provide reports to the commanding officer. Request the requiring activity to consider COR performance in the individual's performance appraisal.

(7) Ensure the nominated COR and ACOR hold positions of responsibility commensurate with the complexity and technical requirements of the contract.

(8) Ensure the nominees have received approved COR training and periodic refresher training and understand the duties, responsibilities, and limitations of the position.

(9) Provide COR and COTR training.

(10) Provide training support to the Naval Medical Education and Training Command and the Baylor University Graduate Program in Healthcare Administration.

d. Naval Medical Logistics Command, Healthcare Services Support Directorate

(1) Serves as the BUMED cognizant technical manager for health care contracting. Serves as a focal point for health care contracting analysis and lessons learned.

(2) Advises BUMED on claimancy health care contracting policies and initiatives.

(3) Provides consultative support and advice to field activities regarding the availability and proper use of various alternative health care delivery methods.

(4) Develops technical specifications for the BUMED health care contracting program. Provides draft SOWs to activities upon request. Assists activities to develop and tailor specific SOWs.

(5) Performs technical review and provides approval of all health care services SOWs for BUMED claimancy activities prior to submission to the cognizant contracting office.

(6) Provides technical review of health care services SOWs for commands outside the BUMED claimancy upon request.

(7) Collects and analyzes relevant financial, workload, and demographic data for contracting initiatives as necessary.

(8) Develops cost, pricing, and incentive strategies for proposed health care contracts.

(9) Provides customers with technical guidance and assistance concerning the health care contracting process. Serves as an ongoing resource to assist customers through the acquisition process.

(10) Participates as cognizant technical manager during pre-proposal and post-award conferences.

(11) Develops and disseminates to field activities procedures for effective, consistent, and accurate technical evaluation of offeror proposals in response to health care services solicitations.

(12) Chairs the technical evaluation committee for high value or complex solicitations or as requested by field activities.

(13) Reviews the technical evaluation reports which result from reviews conducted by field activities.

(14) Provides contract administration support for KOs and CORs through development of CAPs, quality assurance surveillance plans (QASPs), and incentive award plans.

(15) Reviews contract administration and performance documentation from CORs.

(16) Provides ongoing technical advice to KOs and CORs for contract administration issues and policies.

(17) Provides COR and COTR training.

(18) Provides training support to the Naval Medical Education and Training Command and the Baylor University Graduate Program in Healthcare Administration.

(19) Serves as BUMED's program manager for demographic mapping services.

(20) Serves as BUMED's program manager for the health care contract database.

e. COR Duties

(1) Serves as the command's technical point of contact for the contract, providing technical advice or clarification of the SOW when requested by the contractor or the KO.

(2) Inspects performance, rejects performance, and initiates contract remedies upon direction from the KO for less than full performance.

(3) Accomplishes on-site contractor monitoring and surveillance.

(4) Notifies the KO of anticipated and actual variance between quantities ordered and quantities performed.

(5) Monitors the use of Government furnished equipment (GFE), material, and property in the possession of contractors.

(6) Issues contract discrepancy reports (CDRs) to the contractor to document discrepant performance. The COR shall always obtain the contractor's response or rebuttal to the CDR, evaluate the acceptability of the response and promptly forward the CDR contractor response or rebuttal, and the evaluation to the NAVMEDLOGCOM health care program analyst.

(7) Reviews and certifies contractor invoices to ensure appropriateness of types and quantities of services being performed. Complies in a timely manner to ensure the payment due dates set forth in the contract are met.

(8) Submits a report detailing the contractor's performance on an annual basis to the KO. The format for the contractor performance report will be supplied by the KO in the CAP.

(9) Coordinates and facilitates complete and timely credentials submissions between the BUMED field activity and the contractor using the applicable professional affairs coordinator

(PAC) staff at the field activity. The COR shall provide technical advice or clarification regarding the statement of work, milestones to be met within the general terms of the contract or specific subtasks of the contract, maintain a method for tracking expiring credentials, and maintain shift schedules. The COR shall inspect the credentials of each contract employee prior to submission to the PAC.

(10) Includes, on all correspondence to the contractor, a declination of authority statement as follows:

> "I have neither the authority nor the intent to change the terms or conditions of this contract. This contract can only be changed by a written modification issued by the contracting officer. If you believe that I am requesting an effort outside the scope of this contract, promptly notify the contracting officer. Additionally, this shall not be construed as an authorization for new work or additional work not already contained in the contract."

(11) Performs other duties as designated in the CAP of the contract.

(12) Complies with appropriate personal behavior concerning standards of conduct and conflict of interest as set forth in the Joint Ethics Regulation (DOD 5500.7-R).

(13) Maintains complete and accurate contracting files for periodic review by the KO.

(14) Attends NAVSUP approved/NAVMEDLOGCOM provided medical and dental COR training class prior to beginning performance as COR.

(15) Attends NAVSUP approved/NAVMEDLOGCOM provided medical and dental COR refresher training class not later than 3 years from the date of attending initial COR training or the date of the previous COR refresher training.

(16) COR duties are not re-delegable. An ACOR may be appointed to act only in the absence of the COR.

f. COR Prohibitions. The COR is prohibited from:

(1) Making commitments or promises to contractors relating to award of contracts.

(2) Writing contract requirements around the product or capacity of one source.

(3) Soliciting proposals.

(4) Modifying the stated terms of the contract. Issuance of any instructions that would constitute a change to the contract must be avoided. The COR and contractor shall not enter into any understanding, agreement, modification, or change order deviating from the terms of the basic contracts.

(5) Issuing instructions to contractors to start or stop work.

(6) Approving items of cost not specifically authorized by the contract or authorizing additional work to be performed.

(7) Directing changes.

(8) Executing supplemental agreements.

(9) Obligating funds.

(10) Rendering a decision on any dispute or any questions of fact under the disputes provision of the contract.

(11) Taking any action with respect to termination, except to notify the KO.

(12) Authorizing delivery or disposition of Government furnished property.

(13) Allowing the contractor to perform work outside the scope of the contract.

(14) Giving guidance to contractors, either orally or in writing, which might be interpreted as a change in scope or terms of the contract.

(15) Directing or supervising contractor employees, if a COR for a NPS.

(16) Discussing procurement plans or any other advance information that might provide preferential treatment to one firm over another when a solicitation is issued for a competitive procurement.

(17) Disclosing any source selection, proprietary, or privacy information pertaining to the solicitation, award, or performance under a contract.

9. Forms

a. SF 33 (Rev. 9-97), Medical Record Consultation Sheet, is available online at: http://www.gsa.gov/Portal/formslibrary.jsp?type=doc&view=(ByNumber)&doc=884DE4C90A9F054C85256A1F005ABDB1&title=Solicitation,+Offer+and+Award&category=Standard+Forms.

b. SF 26 (Rev. 4-85), Award/Contract, is available online at: http://www.gsa.gov/Portal/formslibrary.jsp?type=doc&view=(ByNumber)&doc=5581FA27C1531C4985256A1F005A2D1D&title=Award/Contract&category=Standard+Forms.

K. L. MARTIN
Vice Chief

Distribution:
(See next page.)

Distribution:
SNDL, C28G (BRDENCLINIC)
C28H (BRMEDCLINIC)
C31J (BRMEDCLINIC)
C31K (MEDADMINU)
C34F (BRMEDCLINIC and NAVMEDCLINIC, LONDON DET)
C52 (BUMED SHORE BASED DETACHMENTS)
C58Q (BRDENCLINIC)
C58R (BRMEDCLINIC)
C85A (BRMEDCLINIC)
FA47 (NAVHOSP)
FA48 (NAVDENCLINIC)
FA49 (NAVMEDCLINIC)
FB58 (NAVHOSP)
FB59 (NAVDENCLINIC)
FB60 (NAVMEDCLINIC)
FC16 (NAVMEDCLINIC)
FC17 (NAVHOSP)
FC18 (NAVDENCLINIC)
FH (BUMED COMMAND ACTIVITIES)
FT108 (NAVHOSP)
FT109 (NAVDENCLINIC)
FT110 (NAVMEDCLINIC)
FW1 (NATNAVMEDCEN)
FW2 (NATNAVDENCEN)
FW3 (NAVHOSP)
FW4 (NAVMEDCLINIC)

Copy to:
SNDL, A6 (CMC)
21A (COMLANTFLT, COMPACFLT, and COMUSNAVEUR)
23A2 (COMNAVFORJAPAN, COMNAVMARIANAS only)
28C2 (COMNAVSURFGRU LONG BEACH only)
28K1 (COMSUBGRU TWO only)
42A1 (COMFAIRCARIB, COMFAIRKEFLAVIK)
42A3 (COMFAIRMED)
42B1 (COMHELWINGSLANT only)
42B2 (COMMATVAQWINGPAC, COMLATWINGPAC only)
FA6 (NAS KEY WEST only)
FA24 (COMNAVBASE GUANTANAMO BAY)
FB28 (COMNAVBASE SAN DIEGO)
FB50 (COMUSFAC)
FC3 (COMNAVACT UK only)

Copy to: (Continued)
SNDL, FF1 (COMNAVDIST)
FT1 (CNET)
FT2 (CNATRA)
FT5 (CNTECHTRA)
FT28 (NETC)
FT31 (NTC GREAT LAKES only)
V16 (CG MCB CAMP BUTLER, CAMP LEJEUNE, AND CAMP PENDLETON
V25 (CG MCAGCC)

Available at: http://nmo.med.navy.mil/default.cfm?seltab=directives

DEFINITIONS

1. Administrative Change. A modification signed only by the KO and having no effect on price, performance, or delivery.

2. Administrative Contracting Officer (ACO). The Government official responsible for administering the contract, to the extent that the procuring contracting officer (PCO) has delegated contract administration. For the purposes of these contracts, the PCO has retained contract administration responsibilities. Therefore, the terms PCO and ACO refer to different functions performed by the same individual.

3. Alternate Contracting Officer's Representative (ACOR). The Government official appointed in writing by the KO who functions as the technical representative of the KO for a specific contract, for a specified period of time during the absence of the COR.

4. Authorized Ordering Activity. The activity designated in an indefinite delivery type contract (IDTC) to issue delivery orders or task orders under that contract.

5. Change Order. A written order signed by the contracting officer which directs the contractor to make changes in performance. The Changes Clause of the contract prescribes the limits of the authority of the contracting officer to make changes. Change orders are not subject to the consent of the contractor.

6. Constructive Change. An unauthorized change made simply by the action or inaction of the Government which results in contractor performance different from, or in excess to, the original contract requirements.

7. Contract. An agreement between the Government and contractor expressing terms and conditions affecting price, performance, and delivery. The agreement includes an offer, acceptance, and consideration between competent parties stated in clear terms and conditions.

8. Contract Administration Plan (CAP). The plan that establishes procedures to ensure satisfactory administration of health care service contracts either retained by the KO or delegated to an authorized representative other than the ACO.

9. Contract Modification. Any alteration to the contract. (See administrative change, change order, and supplemental agreement.)

10. Contracting Officer (KO). Government official who, by position or appointment, is authorized to bind the Government in contracts acting as an agent for the Government.

11. Contracting Officer's Representative (COR). The Government employee responsible for assuring contractor performance through monitoring and surveillance, documentation, and liaison with the contractor and the KO. The COR is nominated by the commanding officer,

appointed in writing by the KO, and is specified in the contract. The COR has no authority to resolve contract disputes or obligate funds. A full list of COR duties and authority limitations are provided in the "Duties" section of this instruction.

12. Contractor. The offeror identified in block 15A of SF 33 or block 7 of the SF 26 and its health care workers who are providing services under the contract.

13. Dental Treatment Facility (DTF). The DOD dental center or clinic requiring services under these contracts. The abbreviation, "DTF" includes all the branch dental clinics, dental administrative units, branch dental annexes, and other subordinate clinical activities specified in these contracts.

14. Medical Treatment Facility (MTF). The DOD hospital or medical center requiring services under these contracts. The abbreviation, "MTF" includes ambulatory care centers, all the branch medical clinics, medical administrative units, branch medical annexes, and other subordinate clinical activities specified in these contracts. The abbreviation "MTF" also refers to any military treatment facility within the scope of these contracts.

15. Non-Personal Services (NPS) Contract. A contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

16. Personal Services Contract (PSC). A contract that makes the contractor personnel appear to have an employer-employee relationship with the Government. The Government retains management authority of the personnel providing the services.

17. Procuring Contracting Office (PCO). The contracting activity, office, or individual responsible for the award of the contract.

18. Quality Assurance (QA). Those actions taken by the Government to check goods or services listed on the performance requirement summary to determine if the requirements of the performance work statement (PWS) are met.

19. Quality Control. Those actions taken by a contractor to control the provisions of services so the requirements of the PWS are met.

20. Service Contract. A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than furnish an end item of supply. A service contract may be either personal or non-personal.

21. Statement of Work (SOW). A document that accurately describes the Government's needs for essential or technical services in terms of the desired output or end product. The SOW becomes a part of the procurement solicitation package (and resulting contract) and describes the scope of work, schedule for performance, staffing requirements, and personnel qualifications.

22. Subject Matter Expert (SME). One who offers advice in an official or professional capacity on health care issues. The advice may or may not be in the advisors area of specialty.

23. Supplemental Agreement. A contract modification signed by both contractor and KO to make a change to the contract. Usually affects price, performance, or delivery.

24. Task Order Contract. A contract for services that do not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and provide for the issuance of orders for performance of the tasks during the period of the contract.

25. Technical Assistant (TA). The MTF or DTF or other field activity representative who may be assigned to provide technical or administrative assistance to the COR. TAs may be assigned to assist and support the COR but shall not be given the authority to provide any technical direction or clarification directly to the contractor.

26. Technical Liaison. The MTF or DTF or other field activity representative named in the contract to liaison with the contractor and the KO on issues of contract performance and payment. A technical liaison is used on those contracts for which a formal COR is not appointed.

SAMPLE CONTRACTING OFFICER REPRESENTATIVE (COR)
NOMINATION LETTER

From: Commanding Officer, _____
To: Procuring Contracting Officer of the applicable Navy Field Contracting System (NFCS) Activity

Subj: NOMINATION OF CONTRACTING OFFICER'S REPRESENTATIVE (COR)

Ref: (a) NAVSUPINST 4205.3B

1. Pursuant to reference (a), I hereby nominate Mr./Ms. _____ as the COR for the contract resulting from requisition number _____ to acquire _____ supplies/services in support of _____.

2. Mr./Ms. _____ qualifications are:

3. Mr./Ms. _____ title, code, business address, and telephone number are: _____.

4. In case of any problems, disagreements, or other questions pertaining to the COR's performance of duties you may contact _____.

5. Mr./Ms. _____ has/has not completed Navy approved COR training. He/she attended/is scheduled to attend the COR course in (month, year).

6. The individual performance rating elements of Mr./Ms. _____ include/do not include the COR function (if not, why not).

7. If an alternate COR (ACOR) is to be appointed to act in the absence of the COR, also provide the information requested in paragraphs 1 through 6 for the ACOR.

8. I recommend that the COR be assigned the following duties:

a. Control all Government technical interface with the contractor.

b. Ensure that a copy of all Government technical correspondence is forwarded to the contracting officer (ordering officer) for placement in the contract (delivery/task order) file.

c. Promptly furnish documentation on any requests for change, deviation, or waiver, whether generated by the Government or the contractor, to the contracting officer (and ordering officer) for their action.

d. Determine causes when the contract is not progressing as expected and make recommendations to the contracting officer for corrective action.

Subj: NOMINATION OF CONTRACTING OFFICER'S REPRESENTATIVE (COR)

e. Monitor contractor performance to ensure individual contractor employees are of the skill levels required and are actually performing at the levels charged against the contract during the performance period.

f. Monitor contractor performance to ensure that the labor hours charged against the contract are consistent and reasonable for the effort completed and that any travel charged was necessary and actually occurred.

g. Monitor Government Furnished Property. Ensure that property provided the contractor is authorized by the contract.

h. Complete the COR report of contractor's performance following the schedule established in the contract administration plan for the contract.

9. Any changes to these recommended duties must be discussed with the undersigned prior to issuing the appointment letter.

_____
Signature of Commanding Officer
or Designee

SAMPLE ALTERNATE COR (ACOR) NOMINATION LETTER

From: Commanding Officer, _____
To: Contracting Officer, _____

Subj: NOMINATION OF ALTERNATE CONTRACTING OFFICER'S REPRESENTATIVE

Ref: (a) NAVSUPINST 4205.3B

1. Per reference (a), I hereby nominate _____ as the ACOR for the contract resulting from requisition number _____ for _____ services at _____.

2. _____ is qualified to perform the ACOR duties.

3. _____ possesses the technical knowledge and project or program office expertise required.

4. _____ _____ title, code, business address, and telephone number are: _____.

5. _____ has graduated from the Navy approved COR training within the last 3 years.

Place of training: _____
Dates of training: _____

6. The performance rating elements for _____ will/will not include the COR function (if not, provide rationale).

Signature: _____ Date: _____
Commanding Officer

ACOR Acknowledgement:
I have reviewed and understand my nomination and the duties, responsibilities, and limitations of the ACOR function.

Signature: _____ Date: _____
ACOR Nominee

Contracting Officer Acceptance:

Signature: _____ Date: _____

SAMPLE TECHNICAL ASSISTANT (TA) APPOINTMENT LETTER

From: Commanding Officer, _____
To: Technical Assistant, _____

Subj: APPOINTMENT AS TECHNICAL ASSISTANT (TA) TO THE CONTRACTING OFFICER'S REPRESENTATIVE (COR)

Ref: (a) NAVSUPINST 4205.3B

1. Pursuant to reference (a), you are hereby appointed as a TA to COR for:

Contract Number: _____
Contractor: _____
COR: _____

2. As TA, you are assigned to provide technical assistance and support to the COR in the administration of the contract described above. You may assist the COR in executing assigned inspection and monitoring duties; however, you may not provide any technical direction or clarification directly to the contractor. Any need for technical direction or clarification should be brought to the attention of the COR for appropriate action. You are to perform your duties in accordance with reference (a) and any amplifying instructions provided herein.

3. In accomplishing your duties as TA you are cautioned to carefully monitor your behavior/ actions to ensure that the contract does not become a PSC through your actions. (See FAR 37.1 and DFARS 237.1.)

4. You are not authorized, either by this letter, or by reference (a), to take any action, either directly or indirectly, that could result in a change in the cost/price, quantity, quality, place of performance, delivery schedule, or any other terms or conditions of the contract (or task/delivery order). You may be held personally liable for any unauthorized acts. Whenever there is the potential that discussions may impact any of the areas described above, immediately stop discussions and notify the COR.

5. Your specific duties are as follows: (This section of the TA letter should be tailored to address the specific duties the COR wants the TA to perform.) The following are examples of duties that may be assigned to the TA:

a. Identify contractor deficiencies to the COR. Review contract, task, delivery order deliverables, recommend acceptance/rejection, and provide the COR with documentation to support the recommendation. Assist in preparing the final report on contractor performance for the applicable contract, task, delivery order following the format and procedure prescribed by the COR. Identify the contractor noncompliance with reporting requirements to the COR. Evaluate the contractor's proposals for specific task or delivery orders and identify problems and areas of concern or issues to be discussed during negotiations to the COR.

Subj: APPOINTMENT AS TECHNICAL ASSISTANT (TA) TO THE CONTRACTING OFFICER'S REPRESENTATIVE (COR)

b. Review contractor status and progress reports, identify deficiencies to the COR, and provide the COR with recommendations regarding acceptance, rejection, and/or Government technical clarification requests.

c. Review invoices for the appropriate mix of types and quantities of labor, materials, and other direct costs, and provide the COR with recommendations to facilitate COR certification of the invoice.

d. Provide the COR with timely input regarding technical clarifications for the SOW, possible technical direction to provide the contractor, and recommend corrective actions.

e. Provide detailed written reports of any trip, meeting, or conversation to the COR subsequent to any interface between the TA and the contractor.

Commanding Officer (or authorized representative)	Date
TA's signature	Date

TA signature and date (which constitutes acceptance of the appointment and conditions thereof).

(The TA shall retain one copy of this letter, signed by both parties, provide one copy to the KO (ordering officer) for retention in the contract (task or delivery order) file, one copy to the COR for retention in the COR's contract file and one copy to the initiating official. Distribution to be completed within 10 days of receipt.)